

COMMISSION ON JUDICIAL PERFORMANCE
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102

Contact: Victoria B. Henley
Director-Chief Counsel
(415) 557-1200

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JUDICIAL PERFORMANCE COMMISSION ISSUES
PUBLIC ADMONISHMENT OF JUDGE JAMES R. WAGONER

The Commission on Judicial Performance has publicly admonished Judge James R. Wagoner of the El Dorado County Superior Court.

The public admonishment concerns the judge's abuse of the contempt power on July 16, 2010 in dealing with a member of the public in the Main Street Courthouse in Placerville. While presiding over a calendar in his second floor courtroom that morning, the judge learned that an individual named Penny Arnold was downstairs in the courthouse lobby, reportedly using her cell phone to take pictures or videos of people in the lobby who were involved in dependency proceedings on the first floor. The judge recessed the proceedings in his court, removed his robe and proceeded to the lobby with two bailiffs. When the judge contacted Ms. Arnold in the lobby, he ordered her to immediately report to his courtroom for a hearing concerning her conduct in the courthouse that morning. Ms. Arnold, who was not involved in any matter pending before Judge Wagoner, did not comply with the judge's order. After repeating his order and a warning that she would be held in contempt if she did not comply, the judge directed the bailiffs to arrest Ms. Arnold for contempt. Ms. Arnold was handcuffed and escorted to a jury room on the second floor where she was held for approximately 40 minutes and then transported to jail. She was in jail for approximately three hours before she was able to post bail. The judge subsequently found Ms. Arnold guilty of direct contempt and sentenced her to five days in jail, with credit for one day served and staying the other four days for one year on the condition that she obey all laws "and all lawful orders and directives of the court."

The California Supreme Court and the commission have stressed that "[t]he contempt power, which permits a single official to deprive a person of his fundamental liberty interest without all of the procedural safeguards normally accompanying such deprivation, must be used with great prudence and caution," and that "[i]t is essential that judges know and follow proper procedures in exercising this power." The commission found that the judge's order to Ms. Arnold to immediately report to his courtroom for a hearing was not a valid order on which a contempt charge could be based and that the judge was without jurisdiction over Ms. Arnold, and further, that the judge gave the appearance of having assumed a law enforcement role in violation of the Code of Judicial Ethics. The commission found that the judge's handling of the matter was improper in four additional respects: improperly remanding Ms. Arnold without a hearing, wrongfully adjudicating the matter as a direct contempt, imposing unlawful conditions

as part of her sentence, and failing to issue an order reciting the facts supporting the contempt finding.

In determining to issue a public admonishment, the commission noted that the judge received an advisory letter in 2009 for abusing his authority with regard to individuals who were not before him. He wrote a letter to a married couple, who had submitted information to the grand jury, ordering them to “cease and desist” contact with the grand jury about matters which they had been advised the grand jury no longer desired contact. He improperly threatened to enforce the order with sanctions such as contempt.

The public admonishment is available on the commission’s Web site at www.cjp.ca.gov (under “Press Releases” and “Public Discipline – 1960 to Present”) and from the commission’s office.

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The commission is composed of three judges, two lawyers, and six public members. The Chairperson is the Hon. Judith D. McConnell of the Court of Appeal, Fourth Appellate District, in San Diego, California.

For further information about the Commission on Judicial Performance, see the commission’s Web site.